

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

UNITED CITIES GAS COMPANY, a
Division of ATMOS ENERGY
CORPORATION INCENTIVE PLAN
ACCOUNT (IPA) AUDIT

) DOCKET NO. 201-007043 51
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TN REGULATORY AUTHORITY
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**UNITED CITIES GAS COMPANY'S
MOTION TO COMPEL FURTHER RESPONSE
BY THE OFFICE OF THE ATTORNEY GENERAL
CONSUMER ADVOCATE AND PROTECTION DIVISION
TO THE FIRST DATA REQUESTS FROM
UNITED CITIES GAS COMPANY**

United Cities Gas Company ("United Cities") hereby moves that the hearing officer compel the Office of the Attorney General Consumer Advocate and Protection Division ("CAD") to further respond to the data requests from United Cities. United Cities further requests that the hearing officer schedule a hearing on this motion.

A copy of the response to the data requests from United Cities filed by the CAD is attached hereto as Exhibit A.

United Cities moves for the hearing officer to compel further response to data request numbers 1, 2, 3, 15 and 21. In support of this motion, United Cities would show the following with respect to each of the objectionable responses submitted by the CAD.

1. Data Request No. 1.

United Cities submits that the objections raised by the CAD are baseless. This interrogatory specifically asks for the identity of any legal and/or factual basis to support the contentions on pages 3 and 4 of the memorandum that there are no factual disputes as to the

material facts numbered 1, 2 and 3. Obviously, this request is specifically directed to the basis of the statement made in the CAD's own memorandum. For the CAD to contend that this request is not reasonably calculated to lead to the discovery of admissible evidence is with all due respect, absurd. If the CAD cannot specifically identify the basis for its contention that there is no factual dispute as to the material facts numbered 1, 2 and 3, there is obviously a dispute. Although the CAD further responded "without waiving" its objections, the response is totally insufficient. The CAD responded by referencing its own memorandum in support for partial summary judgment, the Final Order on Phase II in Docket No. 97-01364, United Cities' entire tariff and the record in Docket Nos. 97-01364 and 01-00704. Rule 56.06 requires that supporting affidavits or other evidence must set forth specific facts showing there is no genuine issue for trial. The CAD is not permitted under Tennessee law to make such broad and encompassing citations in support of its assertions.

2. Response to Data Request No. 2.

Data Request No. 13 is targeted specifically to the statement made on page 13 of the CAD's memorandum that "UCG considered transportation delivery costs and they considered them to be incidental to commodity costs." Again, the CAD cites the entire transcript in Docket No. 97-01364 and the final order on Phase II in that docket. Although the CAD specifically quotes as an example one excerpt in the transcript and one statement in the Final Order on Phase II, the implication from the response is that there are other citations which support its contention. Therefore, the CAD should be compelled to identify all citations in the transcript in Docket No. 97-01364 and the final order on Phase II in that docket which support this assertion.

3. Data Request No. 3.

In response to Data Request No. 3, the CAD admits that it "does not have specific factual documentation that categorically states that transportation prices are included in the indexes; however, the CAD proceeds to state that "however it is a fact and widely recognized by UCG and others within the industry and, knowledge. Unfortunately, the CAD fails to identify the factual support for that statement.

4. Data Request No. 15.

UCG is simply requesting that Dr. Brown give his definition of the words "receipt" and "delivery points," which were used in Paragraph 7 of his affidavit. The CAD attempted to avoid providing a definition by simply stating that "Dr. Brown did not define the terms receipt and delivery." If Dr. Brown cannot define those terms, then the CAD should simply state that.

5. Response to Data Request No. 21.

In Data Request No. 21, United Cities is requesting that the CAD identify and produce any and all documents which reflect communications by and/or between members of the TRA staff, including its legal counsel and the staff of the Attorney General, Consumer Advocate Division, which refer and relate to the matters at issue in this Docket. In response, the CAD has objected on the basis of the attorney-client privilege, attorney work product doctrine and TCA § 10-7-504(5)(a). United Cities has not requested documents which are protected by any of the privileges and/or statutes cited by the CAD. The privileges and/or statutes relied upon by the CAD in its objection protect information which is internal to the CAD. When there are communications between the CAD and/or a third party, including a governmental entity, those privileges are not effective. Clearly, there is no attorney-client privilege between and the CAD and the TRA. If

there is joint defense agreement, then the agreement should be produced and examined by the hearing officer. Clearly the items requested should be produced.

Accordingly, United Cities requests that the hearing officer order the CAD to completely respond to the data requests mentioned above.

Respectfully submitted,

BAKER, DONELSON, BEARMAN
& CALDWELL, P.C.

By: Joe Conner w/ permission
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CERTIFICATE OF SERVICE

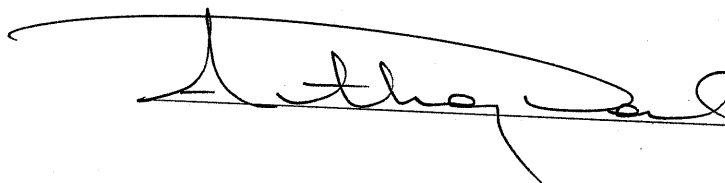
I hereby certify that a true and correct copy of the foregoing was served via facsimile and/or hand delivery on September 24th, 2002.

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A handwritten signature in black ink, appearing to read "J. Wike", written over a horizontal line.